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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/346,859	07/02/1999	CARL H. KNOWLES	'056103.5072-07	2972
9629	7590	08/29/2005	EXAMINER	
MORGAN LEWIS & BOCKIUS LLP 1111 PENNSYLVANIA AVENUE NW WASHINGTON, DC 20004			TRAIL, ALLYSON NEEL	
			ART UNIT	PAPER NUMBER
			2876	

DATE MAILED: 08/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/346,859

Applicant(s)

KNOWLES ET AL.

Examiner

Allyson N. Trail

Art Unit

2876

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 87-94 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 87-94 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 July 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____  | 6) <input type="checkbox"/> Other: _____                                    |

## DETAILED ACTION

### *Amendment*

1. Receipt is acknowledged of the request for continued examination filed August 5, 2005.

### *Remarks*

2. The Substitute Specification filed August 5, 2005 has resolved the inconsistencies noted in the "Notice of Drawing Inconsistency with the Specification" dated February 24, 2005.

### *Claim Objections*

3. Claim 87 is objected to because of the following informalities:

Line 13: replace "its frequency" with --the frequency of the electromagnetic signal--.

Line 27: replace "its" with --the data packet's--.

Appropriate correction is required.

### *Double Patenting*

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 87-94 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, and 8-12 of U.S. Patent No. 6,761,317, hereinafter '317. Additionally, claims 87-94 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,490,769, hereinafter '769. Lastly, claims 87-94 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8 of U.S. Patent No. 6,015,091, hereinafter '091.

Although the conflicting claims are not identical, they are not patentably distinct from each other. Both the current application and patents '317, '769, and '091 claim the same subject matter.

With regards to the double patenting rejection with '317, claims 87 and 93 of the current application include limitations of claim 1 from '317. The limitations of claims 88, 89, 90, 91, 92, and 94 of the current application include limitations of claims 2, 8, 9, 10, 11, and 12 respectively from '769.

With regards to the double patenting rejections of both '769 and '091, claims 87-94 of the current application include limitations of claims 1-8 respectively from '769 and '091.

The obviousness-type double patenting rejection is a judicially established doctrine based upon public policy and is primarily intended to prevent prolongation of the patent term by prohibiting claims in a second patent not patentably distinct from

claims in a first patent. *In re Vogel*, 164 USPQ 619 (CCPA 1970). A timely filed terminal disclaimer in compliance with 37 C.F.R. 1.32(b) would overcome an actual or provisional rejection on this ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 C.F.R. 1.78(d).

***Allowable Subject Matter***

6. Claims 87-94 are allowable over the prior art of record.

7. The following is an examiner's statement of reasons for allowance:

The best prior art of record teaches a system for reading code symbols, wherein the system includes a scanning mechanism, a processing mechanism, and a plurality of base units. The prior art of record however, fails to teach specific features of the system for reading code symbols, which is disclosed in the pending claims. The specific features of the system disclosed in the claims include s synthesizing mechanism for synthesizing a group of data packets, wherein each packet has a plurality of data fields containing codes for identifying the code symbol reading device, which is synthesizing the data packet in the group thereof. The data packet also includes a data packet number for identifying each data packet, a data packet group number for identifying the group to which each data packet belongs, and a sequence of digital data bits representative of the symbol character data. The code reading system further includes an RF signal generator for generating an electromagnetic signal having its frequency modulated by the digital data bits representative of the group of data packets. The RF signal also transmits the modulated signal over a predetermined data transmission range in free space, wherein the frequency deviation of the signal

Art Unit: 2876

produced by each of the code symbol reading devices is substantially the same and equal to a preselected frequency deviation value. Furthermore, although prior art teaches a plurality of base units, the specific features of the claimed base units are not taught. The base units include a receiver for receiving a modulated carrier signal transmitted from any one of the code symbol reading devices and a demodulator for demodulating any one of the received modulated carrier signals so as to recover at least one data packet therefrom. The base units also include a processing mechanism for analyzing the recovered data packet to determine whether the received data packet was synthesized by its assigned code symbol reading device, and if so, the symbol character data is recovered therefrom. Lastly, the base unit includes a buffer for buffering the symbol character data recovered from the data packet synthesized by the preassigned code symbol reading device, and a notification mechanism for automatically producing, in response to the recovery and buffering of the symbol character data, an acknowledgement signal perceptible to the user of the assigned code symbol reading device when the user is situated within the predetermined data transmission range. This is done to inform the user of the code symbol reading device that the symbol character data produced thereby has been received and recovered at the at the assigned base unit. All of the limitation discussed above cannot be found in prior art and moreover, one of ordinary skill would not have been motivated to come to the above claimed invention.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably

accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance.

***Conclusion***

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to *Allyson N. Trail* whose telephone number is (571) 272-2406. The examiner can normally be reached between the hours of 7:30AM to 4:00PM Monday thru Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G. Lee, can be reached on (571) 272-2398. The fax phone number for this Group is (571) 273-8300.

Communications via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by the applicant and should be addressed to [[allyson.trail@uspto.gov](mailto:allyson.trail@uspto.gov)].

Art Unit: 2876

*All Internet e-mail communications will be made of record in the application file.*

*PTO employees do not engage in Internet communications where there exists a possibility that sensitive information could be identified or exchanged unless the record includes a properly signed express waiver of the confidentiality requirements of 35 U.S.C. 122. This is more clearly set forth in the Interim Internet Usage Policy published in the Official Gazette of the Patent and Trademark on February 25, 1997 at 1195 OG 89.*

Allyson N. Trail  
Patent Examiner  
Art Unit 2876  
August 16, 2005

*Jared J. Fureman*  
**JARED J. FUREMAN**  
**PRIMARY EXAMINER**